

underscored by the fact that the first environmental bill of rights was enacted by Ontario rather than Ottawa.

### Federal Powers

The federal government first began expressing interest in environmental policy in the late 1960s. This newfound interest put Ottawa on a collision course with the provinces, who had already occupied the field with comprehensive and complex legislation. Ottawa could rely on two powers granted to the federal government in section 91 of the Constitution Act 1867: the power to regulate trade and commerce and the obligation to guarantee "peace, order, and good government." The courts, however, narrowly construed both heads of powers. The Canadian government, then, in the late 1960s was in a much weaker position than was the U. S. Congress which at that time launched an ambitious and comprehensive legislative scheme of environmental protection, founded on its power under Article I, section 8, to regulate commerce among the states. Its forays into the environmental field were challenged at every step by the provinces. The result was an informal understanding between Ottawa and the provincial premiers that the two levels of government would exercise concurrent jurisdiction over the environment and that conflicts would in general be resolved by intergovernmental negotiation and cooperation rather than by litigation.

Trade and Commerce. The federal environmental regime of the United States is built on Congress's power to regulate commerce. Because of judicial construction, the Canadian federal government has been forced to look for other constitutional foundations for its environmental activities. Beginning with the Judicial Committee of the Privy Council's decision in Citizens Insurance Co. V. Parsons (1881), Canadian courts have rejected the approach of the United States Supreme Court, which gave the widest possible meaning to Congress's power under Article I,